

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 DEANDRE SPENCER,

8 Defendant.

Case No. 2:18-cr-00107-APG-GWF

**ORDER DENYING APPEAL OF
MAGISTRATE JUDGE'S DETENTION
ORDER**

(ECF No. 58)

9
10 Defendant Deandre Spencer appeals from Magistrate Judge Leen's Order of Detention.¹ I
11 must conduct a *de novo* review of the evidence before Magistrate Judge Leen (and any additional
12 evidence submitted by the parties), and make my own independent determination with no
13 deference. *United States v. Koenig*, 912 F.2d 1190, 1193 (9th Cir.1990).

14 In determining whether to detain or release a defendant, the court is required to consider
15 four factors: (1) the nature and circumstances of the offense charged, including whether it is a
16 crime of violence or involves drugs;² (3) the history and
17 characteristics of the defendant; and (4) the nature and seriousness of the danger to any person or
18 the community should the defendant be released. 18 U.S.C. § 3142(g).³

19
20 ¹ Spencer requested that I stay consideration of his motion until Magistrate Judge Leen
21 ruled upon Spencer's motion to reopen his detention hearing. *See* ECF No. 58 at 1. I did so.
22 Magistrate Judge Leen denied that motion on May 23, 2018 ECF No. 59. I have considered that
order and related papers when deciding Spencer's appeal of Magistrate Judge Leen's original
detention order.

23 ² This factor "is the least important of the various factors." *United States v. Motamedi*, 767
24 F.2d 1403, 1408 (9th Cir. 1985). "Although the [bail reform] statute permits the court to consider
25 the nature of the offense and the evidence of guilt, the statute neither requires nor permits a
pretrial determination that the person is guilty." *Id.* (citations omitted). "[I]f the court
26 impermissibly makes a preliminary determination of guilt, the refusal to grant release could
27 become in substance a matter of punishment." *Id.* Accordingly, this factor "may be considered
28 only in terms of the likelihood that the person will fail to appear or will pose a danger to any
person or to the community." *Id.*

³ Magistrate Judge Leen did not consider Spencer to be a flight risk. Nor do I.

1 Magistrate Judge Leen's analysis, findings, and conclusions—both in her original
2 detention order (ECF No. 52) and in her order denying the motion to reopen detention (ECF No.
3 59)—are correct and I adopt them as my own. *Koenig*, 912 F.2d at 1193. There are no conditions
4 or combination of conditions that could be fashioned that would reasonably protect the
5 community against the risk of danger posed by Spencer.

6 IT IS THEREFORE ORDERED that Spencer's motion for review of detention order
7 **(ECF No. 58) is DENIED.**

8 DATED this 4th day of June, 2018.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE